

**Foote and Davies, Inc. and Bruce Arthur Plambeck, Petitioner, and Carpenters District Council of Atlanta and Vicinity for and on behalf of Industrial Local Union No. 2546, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 10-RD-742**

June 15, 1982

### DECISION AND DIRECTION

BY MEMBERS FANNING, JENKINS, AND  
ZIMMERMAN

Pursuant to authority granted it by the National Labor Relations Board under Section 2(b) of the National Labor Relations Act, as amended, a three-member panel has considered determinative challenges in an election held June 30, 1981,<sup>1</sup> and the Hearing Officer's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and briefs, and hereby adopts the Hearing Officer's findings<sup>2</sup> and recommendations, as modified herein.

The Hearing Officer recommended that the challenge to the ballot of Whiteford Mauldin be sustained because she found that Mauldin had abandoned his struck job prior to the election date. We find merit in the Union's exceptions to this recommendation.

Mauldin worked for the Employer from August 1980 until an economic strike commenced on October 15, 1980. On that date, his pay was \$7.75 an hour. Mauldin walked the picket line from the inception of the strike through December 1980, and thereafter visited the picket line two or three times a month. On January 19, 1981, Mauldin began working for another employer, Scientific Atlanta. In early May 1981, Employer's personnel manager, Robert Martens, telephoned Mauldin. The Hearing Officer credited Martens' testimony that during this conversation Mauldin stated, "I know I can never return to Foote and Davies." Mauldin still worked for Scientific Atlanta at the time of the election held on June 30, 1981. On that date, Mauldin

earned \$8.14 per hour at Scientific Atlanta, and would have earned \$8.50 per hour at his former position with the Employer, although his fringe benefits would have been less there. The record also reveals that, while working for the Employer, Mauldin had worked substantial overtime, and his net pay there had been approximately \$50 more per week than his net pay at Scientific Atlanta.

As noted by the Hearing Officer, an economic striker is presumed to continue in that status and is eligible to vote pursuant to the terms of Section 9(c)(3) of the Act. This presumption of a striker's eligibility may be rebutted by objective evidence that the striker has abandoned interest in the struck job. Mere acceptance of other employment during the strike will not itself be sufficient evidence of abandonment.<sup>3</sup> "Where a striker has directly communicated to the [struck] employer his intention to quit, however, there must be some showing of reservation or qualification or continued interest before the Board will ignore that stated intention."<sup>4</sup>

The Hearing Officer concluded that Mauldin's "I know I can never return to Foote and Davies" statement constituted clear objective evidence of Mauldin's abandonment of his struck job. We disagree. Initially, we note that the statement did not on its face manifest a clear intention to quit. It was, at best, an ambiguous expression which could also be interpreted either as an acknowledgment that he may have been permanently replaced or that the Employer might not want him to return to work after the strike.<sup>5</sup> Secondly, Mauldin demonstrated his continuing interest in his job with the Employer by continuing to visit the picket line on a regular basis from the time he began working for Scientific Atlanta until the election date. Finally, the fact that Mauldin made significantly more money working for the Employer militates against a finding that he had abandoned interest in returning to that job.

Based on the foregoing, we find that the single statement relied on by the Hearing Officer did not constitute sufficient objective evidence that Mauldin had abandoned interest in his struck job, and we conclude that he was therefore eligible to vote. We hereby overrule the challenge to his ballot, and shall direct the Regional Director to open and count his ballot.

### DIRECTION

It is hereby directed that the Regional Director for Region 10 shall, pursuant to the Rules and Reg-

<sup>1</sup> The election was conducted pursuant to the Acting Regional Director's Decision and Direction of Election. The tally was 15 for and 14 against the Union with 7 challenged ballots. Thereafter, the Acting Regional Director issued a Supplemental Decision and Order which ordered, *inter alia*, that four of the challenged ballots be opened and counted. The revised tally was 16 for and 17 against the Union. The hearing herein was conducted with respect to the two remaining determinative challenged ballots.

<sup>2</sup> The Employer has excepted to certain credibility resolutions made by the Hearing Officer. It is the established policy of the Board not to reverse a hearing officer's credibility resolutions when they are based on observation of the demeanor of witnesses as they testify at the hearing, unless the clear preponderance of all the relevant evidence convinces us that the resolutions were incorrect. *The Coca-Cola Bottling Company of Memphis*, 132 NLRB 481, 483 (1961); *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record in this case and see no basis to reverse the Hearing Officer's credibility resolutions.

<sup>3</sup> *Pacific Tile and Porcelain Company*, 137 NLRB 1358 (1962).

<sup>4</sup> *Bromine Division, Drug Research, Inc.*, 233 NLRB 253, 261 (1976).

<sup>5</sup> We note in this regard that Mauldin testified without contradiction about a history of antagonism with Martens.

ulations of the Board, within 10 days from the date of this Decision and Direction, open and count the ballots of Lanny Wiley and Whiteford Mauldin,

and shall thereafter cause to be served on the parties a second revised tally of ballots and, based on the count therein, issue an appropriate certification.